her. The defence was compulsory pilotage. They then applied to add the pilot as a defendant. That was an action *in personam*. If the application was granted then there would be two trials going on concurrently, one against the ship which would be a trial by a judge and assessors and the other against the pilot, which would be by the same judge and a jury. There would be the difficulty of applying different legal standards, because questions of negligence and contributory negligence might have arisen and therefore it might have been necessary to apply the common law standard and where no question of contributory negligence could arise, the Admiralty standard would have to be applied. Then there was the difficulty in drawing up the two judgments. The Court of Appeal as a matter of discretion refused the application. The difficulty that was envisaged by the Court of Appeal in *The Germanic* did not exist in *The Cheapside* and the court in exercising its discretion refused to strike out the counterclaim on the ground of embarrassment. There is another case, *Metropolitan Asylum Board* v. *Sparrow*.[9] That was also an action *in rem* against the owners of the ship in the Admiralty Division. The pilot elected to a trial by jury but that was refused. The Court of Appeal on the ground that the pilot had a right to a jury, ordered the action to be transferred to the King's Bench Division.

In the light of these authorities it is clear that in a given case like the present the court has an unfettered discretion to allow a claim *in personam* to be engrafted upon a claim *in rem*, provided no injustice or inconvenience is caused when the case comes up for trial.

In this country admiralty and common law cases are tried in the High Court without a jury, although where the judge requires expert advice on nautical matters, reference may be made to the Registrar with or without assessors: (See Order 56 of the Rules of the Supreme Court). The court will not envisage any difficulty in applying the various legal standards affecting the present case. The main evidence and the main enquiry would be the same *i.e.*, damage done to the cargo. There would be no difficulty in drawing up the judgment, in fact there would be only one judgment. On the whole the difficulty does not exist which was felt in *The Germanic* and other allied cases. In the circumstances of this case I think it is just and convenient that the Cargo Handling Corporation Sdn. Bhd. be joined as a defendant in order that the matter can be effectively and completely adjudicated upon.

Order accordingly.

Solicitors: *Shearn, Delamore & Co.; Allen & Gledhill; Skrine & Co.*

KUALA LUMPUR, KLANG & PORT SWETTENHAM OMNIBUS CO. BERHAD v. TRANSPORT WORKERS' UNION

[O.C.J. (Raja Azlan Shah J.) April 21, 1970]

[Kuala Lumpur — Originating Summons No. 380 of 1969]

Industrial Law — Trade unions — Meaning of "statutory authority" — Whether includes company incorporated under Companies Act, 1965 — Emergency (Trade Unions) Regulations, 1969 — Interpretation of statutes — Trade Unions Ordinance, 1959, s. 27(3).

The question raised in this application was whether the words "statutory authority" in section 27(3) of the Trade Unions Ordinance, 1959 include a company constituted under the Companies Act, 1965.

Held: the words "statutory authority" as enacted in section 27(3) of the Trade Unions Ordinance, 1959 do not include a company incorporated under the Companies Act, 1965.

Case referred to:-

(1) *Nuth* v. *Tamplin* (1881) 8 Q.B.D. 247, 253.

ORIGINATING SUMMONS.

V. C. George for the applicant company.

R. Ponnudurai for the respondent union.

Raja Azlan Shah J.: There arose a dispute between the Kuala Lumpur, Klang and Port Swettenham Omnibus Company Berhad, the applicant company in the present proceedings and the Transport Workers' Union (Federation of Malaya), the respondent union. The dispute had reached a stage where the Industrial Court was asked to adjudicate upon the matter but the hearing was adjourned to enable the applicant company to seek a ruling from this court on the following questions:

"1. Do the words 'statutory authority' include a company constituted under the Companies Act, 1965 for the purposes of section 27(3) of the Trade Unions Ordinance, 1959?

2. If so, have the employees of the Kuala Lumpur, Klang and Port Swettenham Omnibus Company Berhad ceased to be members of the respondent union?

3. If they have ceased to be members, (a) can the respondent union represent the said employees at the Industrial Court so as to cause them to be bound by any decision of the Industrial Court; and (b) is the reference by the Minister rendered void by virtue of the fact that the respondent union no longer represents the workers; and

4. In the circumstances should the Industrial Court proceed with the hearing of the case before it?"

It is conceded that for the present purpose only question No. 1 need be considered. It is urged on behalf of the applicant company that they are a statutory authority within the meaning of the definition "statutory authority" as enacted in section 27(3) of the Trade Unions Ordinance, 1959. If that is the case, then they argue that their employees cannot be members of the respondent union as their membership are not confined exclusively to persons employed by the applicant company and therefore the respondent union who claim to represent the workers of the applicant company have no *locus standi*. In other words it is urged that the words "statutory authority" are to be read literally and that I should not put a restricted meaning to it.

I will now cite the provisions of section 27 of the Trade Unions Ordinance, 1959, which came into force on June 1, 1959. Section 27 then had two subsections. Subsection (1) prohibits public officers from becoming members of trade unions. Subsection (2) gives certain exemptions whereby certain classes of public officers can become members of trade unions or that certain conditions can be imposed on those public officers who are members of trade unions.

"Public Officer" is defined in the Interpretation Act, 1967. It means a person lawfully holding, acting in or exercising the functions of a public office. "Public office" means an office in any of the public services. "Public services" means the public services mentioned in article 132(1) of the Federal Constitution, that is, the armed forces, the judicial and legal service, the general public service of the Federation, the police force, the railway service, the joint public service mentioned in article 133, and the public service of each State.

By virtue of regulation 9 of the Essential (Trade Unions) Regulations, 1969, as enacted by P.U. (A) 408/69, section 27 was amended by adding to it a new subsection, *i.e.*, subsection (3). That came into force on October 9, 1969. I will reproduce subsection (3) as it is material for our present purpose:

"(3) (a) No person employed by a statutory authority shall join or be a member of, or be accepted as a member by any trade union unless the membership of that trade union is confined exclusively to persons employed by the particular statutory authority.

(b) Any trade union whose membership is confined to persons employed by a statutory authority shall not be affiliated to any other trade union or federation of trade unions whose membership is not otherwise so confined.

For the purpose of this subsection, the expression 'statutory authority' shall mean an authority or body established. appointed or constituted under a Federal or State law."

The legislature could have inserted the new subsection (3) as a separate section but they thought fit not to do so. Instead they inserted it as a subsection of section 27. The intention of the legislature can only be ascertained from the terms of the section itself. Therefore the whole of the section must be looked into, for every section of an enactment is a substantive enactment in itself. It is an elementary rule of construction of a statute that a section of a statute must be read literally unless one of two things occur; either there is some other section which cuts down its meaning or else the section itself is repugnant to the general purview of the Act: (see *Nuth* v. *Tamplin*[1]).

In other words it is certainly a right doctrine to apply that in the consideration of all Acts of Parliament, and that includes the construction of a subsection, that, unless there is compelling reason for it, words should not be imported into an Act of Parliament either by way of limitation or extension. Is there compelling reason which restricts the meaning and operation of subsection (3)? I think there is. Subsection (1) enacts that a public officer as popularly understood is restricted from being a member of a trade union. Subsection (3) was added so as to include employees who could not be catered under the class of "public officers" but nevertheless bear the same characteristics. In other words, section 27 as a whole prohibits public officers as popularly understood as well as employees of these public authorities which are outside the scope of "public services" as defined in the Constitution, *e.g.* M.A.R.A. from becoming members of trade unions. To put a literal construction on subsection (3) will be to construe the words "public officer" and "person employed by a statutory authority" in a different sense. That is not the intention of the legislature as can be ascertained from the terms of the whole section itself. The marginal note too, which reads "membership of public officers" is certainly of consequence in considering the general trend of the section as a whole.

Therefore the question in the summons must be answered by saying that the words "statutory authority" as enacted in section 27(3) of the Trade Unions Ordinance, 1959 do not include a company incorporated under the Companies Act, 1965.

Costs to respondent to be taxed.

Questions answered.

Solicitors: *Ng Ek Teong, Zain & Selvarajah; R. Ponnudurai.*

ANG SIEW HOCK & ORS. v. ANG CHOON KOAY

[O.C.J. (Raja Azlan Shah J.) April 21, 1970]

[Kuala Lumpur — Civil Suit No. 1510 of 1965]

Chinese Law and Custom — Family house — Use and enjoyment of — Interpretation of trust deed — Meaning of "children and descendants of deceased".

Wills and Trusts — Trust deed — Interpretation — Meaning of "children and descendants of deceased" — Family house — Use and enjoyment of.

This was an application for the interpretation of words and phrases used in a trust deed which provided that certain lands and premises were to be held "as to such premises situated on the said lands as were used by the said Ang Seng deceased in his lifetime as a family house, upon trust as a family house in accordance with Chinese custom for the enjoyment, use and occupation of the said Ann Chee and the children and descendants of the said Ang Seng deceased". The trust deed was prepared pursuant to an order of court to carry out the terms of the will of the deceased.

Held: (1) there was sufficient evidence in this case that the deceased intended that Chinese custom in respect of the use and enjoyment of the family house be followed;

(2) that according to Chinese custom the words "the children and descendants of the said Ang Seng deceased" must be construed to mean only the male issues and their descendants and only they are entitled to the use and enjoyment of the family house.

Case referred to:-

(1) *Re Tan Soh Sim deceased; Chan Lam Keong & Ors.* v. *Tan Saw Keow & Ors.* [1951] M.L.J. 21.

CIVIL SUIT.

K. L. Devaser for the plaintiffs.

T. Selvarasan for the defendants.

Raja Azlan Shah J.: I have been asked to interpret the words and phrases embodied in a trust deed. The relevant passages are as follows:

"1. In consideration of the premises, the trustees hereby declare that they hold the said lands as trustees upon the following terms:

(a) Upon trust until the expiration of twenty-one years from the death of the last surviving child of Ang Seng, deceased:

(i) As to such premises situated on the said lands as were used by the said Ang Seng now deceased, in his lifetime as his family house, upon trust as a family house in accordance with Chinese custom for the enjoyment, use and